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Supreme Court of the United States

VINCENT F. STRAWBRIDGE, JR.;
REBECCA S. STRAWBRIDGE,

Petitioners,

v.

SUGAR MOUNTAIN RESORT, INC.;
B. DALE STANCIL,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

R. Hayes Hofler, III
Counsel of Record
HAYES HOFLER, P.A.
1007 Vickers Avenue
Durham, North Carolina 27707
(919) 682-9663

Counsel for Petitioners

THE LEX GROUP^{DC} ♦ 1750 K Street, NW ♦ Suite 475 ♦ Washington, DC 20006
(202) 955-0001 ♦ (800) 815-3791 ♦ Fax: (202) 955-0022 ♦ www.thelexgroupdc.com

QUESTION PRESENTED

Whether, under fundamental due process principles summarized and established by this Court in *Smith v. Phillips*, the trial court has a duty to hold an inquiry or hearing when a party at trial questions jurors' impartiality.

PARTIES TO THE PROCEEDINGS

Petitioners are Vincent F. Strawbridge, Jr. and Rebecca S. Strawbridge.

Respondents are Sugar Mountain Resort, Inc., and B. Dale Stancil.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Vincent F. Strawbridge, Jr. and Rebecca S. Strawbridge respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The unpublished opinion of the Court of Appeals is reported as *Strawbridge v. Sugar Mountain Resort, Inc.*, 152 Fed. Appx. 286 (4th Cir. 2005) (unpublished; not selected for publication in the Federal Reporter). It is reproduced in the Appendix at App. 1a. The District Court's judgment and opinion denying petitioners' motion for new trial are both unreported and are reproduced in the Appendix at App. 11a, and App. 14a, respectively.

JURISDICTION

The court of appeals judgment was entered on October 28, 2005. A timely petition for rehearing was denied on December 20, 2005. Appendix at 20a. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Seventh Amendment to the United States Constitution provides that: "In suits at common law,...the right of trial by jury shall be preserved...."

STATEMENT

Petitioners seek review of the ruling of the Fourth Circuit Court of Appeals which held that federal trial courts do not have to provide an opportunity to prove

actual bias when a juror's partiality is questioned, contrary to this Court's requirement as enunciated in *Smith v. Phillips*, 455 U.S. 209, 215 (1982).

Petitioners seek review of the Fourth Circuit's ruling because it is in conflict with the rulings of this Court in *Smith v. Phillips*, 455 U.S. 209 (1982), *Dennis v. United States*, 339 U.S. 162 (1950), and others. It is also in conflict with the rulings of several other circuits, and this unpublished opinion does not conform with the Fourth Circuit's own requirements when a juror's partiality is questioned. *See United States v. Rucker*, 557 F.2d 1046 (4th Cir. 1977); *United States v. Bynum*, 634 F.2d 768 (4th Cir. 1980); *Jones v. Cooper*, 311 F.3d 306 (4th Cir. 2002).

The petition arises out of a personal injury action brought by Vincent Strawbridge and his wife, Rebecca Strawbridge, following an injury Mr. Strawbridge suffered while skiing at Sugar Mountain Resort, Inc. ("SMR") in North Carolina on January 22, 1998. He suffered a spinal cord injury which rendered him a quadriplegic and made him unable to work to support Mrs. Strawbridge and 10 children. Mr. Strawbridge had skied over a ledge at SMR's resort, where he hit an unmarked bare spot of dirt, and fell. B. Dale Stancil ("Stancil") was named as a defendant on the theory that SMR was his alter ego. Stancil's presence as a defendant was of moment because SMR carried only $1 million in liability insurance.

The district court denied SMR's and Stancil's motion for summary judgment on the issues of negligence and alter ego, but granted the motion on the Strawbridges' request for punitive damages. During jury selection beginning July 12, 2004, the judge asked the panel whether any of the jurors knew of any biases that would affect them, and there was no affirmative response.

Later, the Strawbridges' lawyer asked them whether they knew anybody who was even remotely connected with the ski industry, and again there was no response. After plaintiffs passed the jury, defense counsel asked whether any of the jurors knew anyone closely connected with the ski industry. At this time, juror Nicholson, who had been on the panel when plaintiffs' counsel asked the above question, responded that the president of the company for which he worked was a volunteer ski patroller who might have worked for SMR, the defendant. Plaintiffs' case was based on ski patroller negligence in failing to post warnings of hazardous ski conditions. Another juror, McDonald, reported that the son of one of her best friends owned a local ski shop.

When defense counsel passed the jury, the Strawbridges immediately requested that voir dire be reopened to allow them to inquire of jurors Nicholson and McDonald. This request was denied. At the close of the evidence, the Strawbridges moved to strike jurors Nicholson and McDonald, and this motion was denied. The jury returned a verdict for the defendants on the seventh day of trial. Juror Nicholson was the foreman. A motion for new trial again questioning jurors Nicholson's and McDonald's impartiality was denied without hearing.

The Strawbridges appealed the judgment and denial of motion for new trial of the Western District of North Carolina to the Fourth Circuit Court of Appeals. There, a three-judge panel of the Fourth Circuit requested oral argument, but affirmed the trial court in an unpublished opinion. The Fourth Circuit subsequently denied a petition for rehearing *en banc* filed by petitioners.

REASONS FOR GRANTING OF THE PETITION

A. The Court of Appeals' Decision Undermines this Court's Decision in *Smith v. Phillips* and Others.

The court of appeals decision has decided the issue of a party's fundamental right to an impartial jury in a way that conflicts with relevant decisions of this Court. Although unpublished, its decision is so repugnant to controlling rules and decisions of the Supreme Court that a grant of certiorari is warranted.

The decision of the Fourth Circuit in this case provided an erroneous answer to the question of whether a litigant is entitled to reopen voir dire or have the court make further inquiry when a suspicion of juror bias arises. The Fourth Circuit's unpublished opinion conflicts with its own published opinions, and with the published opinions of at least five other circuits which have held that it is reversible error for the trial court to fail to explore a juror's potential bias once the juror's potential for bias is made known to the court.

In *Smith v. Phillips*, 455 U.S. 209, 215 (1982), this Court, after reviewing other Supreme Court decisions dealing with this subject, recognized that due process requires a hearing or other inquiry when a party raises suspicions about a juror's ability to be impartial:

> Due process means a jury capable and willing to decide the case solely on the evidence before it, and a trial judge ever watchful to prevent prejudicial occurrences when they happen. Such determinations may properly be made at a hearing like that ordered in Remmer and held in this case.

Smith v. Phillips, 455 U.S. at 217. Justice Rehnquist began his review of other Supreme Court decisions standing for this principle by stating, "This court has long held that the remedy for allegations of juror partiality is a hearing in which the defendant has the opportunity to prove actual bias." *Id.*, at 215. *See also Remmer v. United States*, 347 U.S. 227, 229 (1954); *Dennis v. United States*, 339 U.S. 162, 171-172 (1950); *Chandler v. Florida*, 449 U.S. 560, 575 (1981). As this Court explained in *Dennis*, 339 U.S. at 171-172, "preservation of the opportunity to prove actual bias is a guarantee of a defendant's right to an impartial jury."

The Fourth Circuit's primary error was its holding that the Strawbridges had made no showing that the questioned jurors were biased and that the trial court "did not abuse its discretion in declining to hold a hearing or permit further questioning on the issue of actual bias." *Slip Opinion*, Appendix at 9a-10a. But the Fourth Circuit, in so holding, ignored its own previous opinion that the trial court's "broad discretion in overseeing the conduct of voir dire," is limited by "the essential demands of fairness" (citing this Court in *Aldridge v. United States*, 283 U.S. 308 (1931)) after notice of possible bias of particular jurors is given the court. *United States v. Rucker*, 557 F.2d 1046, 1049 (4th Cir. 1977). According to the Fourth Circuit, itself, once a venireman's answers to voir dire questions indicates "at least an ambiguity" regarding his fitness to sit as a venireman, the matter must be "inquired into in greater depth" by the court. *Id.*, at 1047-48.

Limits on the trial court's discretion in conducting jury voir dire when questions about jurors' impartiality are raised have been in place since *United States v. Burr*, 25 F.Cas. 49 (1807), wherein Chief Justice John Marshall addressed the ways in which the law strives to ensure an impartial jury: "The end to be obtained is an impartial